

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KARRA M. BARRETT,

Plaintiff,

v.

NEW YORK STATE, OFFICE FOR
PEOPLE WITH DEVELOPMENTAL
DISABILITIES,

Defendant.



18-CV-1425 (JLS) (HKS)

DECISION AND ORDER

On December 6, 2018, Plaintiff Karra M. Barrett, proceeding *pro se*, commenced this action against Defendant New York State, Office for People with Developmental Disabilities, asserting claims under the Americans with Disabilities Act and the New York State Human Rights Law. *See* Dkt. 1. After briefing on Defendant's motion to dismiss, this Court referred this matter to United States Magistrate Judge H. Kenneth Schroeder for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 16. This Court adopted Judge Schroeder's February 1, 2022, Report and Recommendation ("R&R") to grant Defendant's motion to dismiss and to grant Plaintiff's motion to amend in part. Dkt. 18.

On July 18, 2022, the Clerk of the Court accepted Plaintiff's amended complaint, Dkt. 9-1, as the operative complaint in this matter. Dkt. 19. Defendant moved to dismiss on August 24, 2022. Dkt. 20. Plaintiff opposed, Dkt. 24, and Defendant replied, Dkt. 25.

On August 30, 2023, Judge Schroeder issued an R&R recommending that Defendant's motion to dismiss be granted with respect to Plaintiff's ADA failure-to-accommodate claim and denied in all other respects. Dkt. 27, at 13. The R&R also recommends that this Court construe Plaintiff's proposed second amended complaint, Dkt. 15, as a motion for leave to file an amended complaint and grant that motion. Dkt. 27, at 13.

The parties did not object to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

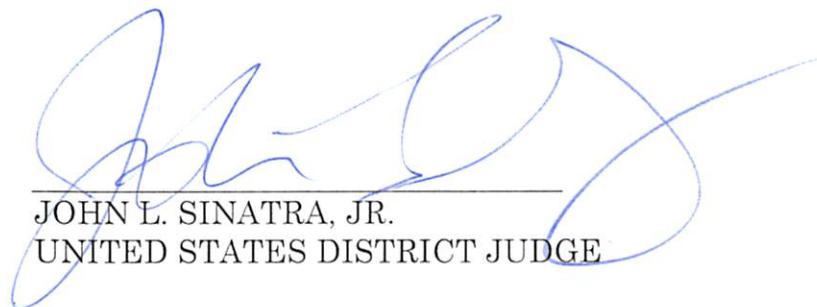
A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

Though not required to do so here, this Court has reviewed Judge Schroeder's R&R and the relevant record. Based on that review and the absence of any objections, the Court accepts Judge Schroeder's recommendation to grant in part and deny in part, Defendant's motion to dismiss. The Court also accepts Judge Schroeder's recommendation to construe Plaintiff's proposed second amended complaint as a motion for leave to file an amended complaint and grant that motion.

For the reasons stated above and in the R&R, the Court GRANTS Defendant's motion to dismiss as to Plaintiff's ADA failure-to-accommodate claim and DENIES the motion in all other respects (Dkt. 24). Plaintiff's filing of the proposed second amended complaint is construed as a motion for leave to file that complaint and that motion is GRANTED (Dkt. 15). The case is referred back to Judge Schroeder for further proceedings consistent with the referral order of January 27, 2020. Dkt. 16.

SO ORDERED.

Dated: September 28, 2023
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE